



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

MAY 9 12 52 PM '05

DISPATCH

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 05-1309

Released: May 5, 2005

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS FROM ICG TELECOM GROUP, INC., TO XSPEDIUS COMMUNICATIONS, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-180

Comments Due: May 19, 2005

Reply Comments Due: May 26, 2005

On April 21, 2005, ICG Telecom Group, Inc. ("ICG") and Xspedius Communications, LLC ("Xspedius Parent"), on behalf of itself and certain of its operating subsidiaries¹ (collectively, "Xspedius," and together with ICG, "Applicants"), filed an application pursuant to sections 63.03, 63.04, and 63.24 of the Commission's rules² requesting authority to complete a transaction whereby Xspedius will acquire certain of the assets of ICG, including certain customer accounts.³

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because (1) the proposed transfer will result in Xspedius having less than a ten percent (10%) share of the interstate, interexchange market; (2) Xspedius will provide local exchange services exclusively in geographic areas served

¹ Xspedius Management Co. Switched Services, LLC; Xspedius Management Co. International, LLC; Xspedius Management Co. of Birmingham, LLC; Xspedius Management Co. of Mobile, LLC; Xspedius Management Co. of Montgomery, LLC; Xspedius Management Co. of Atlanta, LLC; Xspedius Management Co. of Lexington, LLC; Xspedius Management Co. of Louisville, LLC; and Xspedius Management Co. of Chattanooga, LLC.

² 47 C.F.R. §§ 63.03, 63.04, and 63.24; *see* 47 U.S.C. § 214.

³ Applicants have also filed an application to transfer control of their International Section 214 authority. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

by a dominant local exchange carrier that is not a party to the transaction; and (3) neither of the Applicants is dominant with respect to any service.⁴

ICG is a Colorado corporation that provides local and long distance telecommunications services, data services, information services, and other communications solutions primarily to medium and large-sized businesses, ISPs, interexchange carriers, and other telecommunications carriers. ICG holds international resold and facilities-based Section 214 authority. ICG is a wholly-owned subsidiary of ICG Holdings, Inc., a Colorado company, which in turn is a wholly-owned subsidiary of ICG Communications, Inc. ("ICG Parent"). ICG Parent is wholly-owned by MCCC ICG Holdings LLC ("MCCC"). MCCC has a greater than 10% equity interest in another telecommunications company, Mpower Communications Corp.

Xspedius Parent is a privately-held Delaware limited liability company. Through its subsidiaries, Xspedius provides advanced, integrated telecommunications service targeted to residential and small business customers, including local and long distance telephone services in combination with enhanced communication features. Xspedius Parent is authorized to provide competitive local and long distance telecommunications services in 20 states and the District of Columbia.⁵ Xspedius Parent holds international resold and facilities-based Section 214 authority, as does its subsidiary, Xspedius Management Co. International, LLC. The following entities own a 10% or greater interest in Xspedius Parent: Xspedius Management Co., LLC ("XMC"), a Delaware LLC (53%), and Xspedius Holding Corp. ("XHC"), a Delaware corporation, (47%). Thermo Telecom Partners LLC ("Thermo"), a U.S. entity, owns 98% of XMC. James Monroe III's Grantor Trust ("Trust"), a U.S. trust, owns 99% of Thermo. Trust is wholly-owned by James Monroe III, a U.S. citizen. XHC is owned and controlled by the 1818 Funds III, LP ("1818 Funds"), a U.S. limited partnership, (42%) and Meritage Private Equity Funds ("Meritage"), a U.S. organization, (39%). The general partner of 1818 Funds, Brown Brothers Harriman & Co., a U.S. organization, owns 2% of 1818 Funds. The general partners of Meritage, Meritage Investment Partners, LLC and Meritage Investment Partners II, LLC, both

⁴ 47 C.F.R. § 63.03(b)(2)(i).

⁵ In addition to the Applicants, the following wholly-owned subsidiaries of Xspedius Parent provide intrastate telecommunications services in Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia: Xspedius Management Co. of Albuquerque, LLC; Xspedius Management Co. of Austin, LLC; Xspedius Management Co. of Baton Rouge, LLC; Xspedius Management Co. of Charleston, LLC; Xspedius Management Co. of Colorado Springs, LLC; Xspedius Management Co. of Columbia, LLC; Xspedius Management Co. of D.C., LLC; Xspedius Management of D.C., LLC; Xspedius Management Co. of Dallas/Fort Worth, LLC; Xspedius Management Co. of El Paso, LLC; Xspedius Management Co. of Fort Worth, LLC; Xspedius Management Co. of Greenville, LLC; Xspedius Management Co. of Irving, LLC; Xspedius Management Co. of Jackson, LLC; Xspedius Management Co. of Jacksonville, LLC; Xspedius Management Co. of Kansas City, LLC; Xspedius Management Co. of Las Vegas, LLC; Xspedius Management Co. of Little Rock, LLC; Xspedius Management of Louisiana, LLC; Xspedius Management Co. of Maryland, LLC; Xspedius Management Co. of Pima County, LLC; Xspedius Management Co. of San Antonio, LLC; Xspedius Management Co. of Shreveport, LLC; Xspedius Management Co. of South Florida, LLC; Xspedius Management Co. of Spartanburg, LLC; and Xspedius Management of Virginia, LLC. There are no other affiliates of Xspedius that offer domestic telecommunications services.

U.S. entities, each own less than 3% of Meritage. No other person or entity will hold a 10% or greater direct or indirect interest in Xspedius Parent.

Pursuant to the terms of an Asset Purchase ("Agreement") dated April 6, 2005, Xspedius will acquire certain of ICG's assets related to ICG's communications business in five markets: Birmingham, Alabama; Atlanta, Georgia; Louisville, Kentucky; Charlotte, North Carolina; and Nashville, Tennessee. Accordingly, Applicants are seeking approval to transfer assets of ICG to Xspedius. The assets include fiber network, switching, certain customers, and other related assets. The proposed transaction is not expected to result in any loss or impairment of service to any of the ICG customers.

Applicants assert the proposed transaction will serve the public interest. The Applicants expect that the proposed Transaction will increase competition in the telecommunications market by strengthening Xspedius' position as an effective and multifaceted telecommunications carrier. Xspedius states that acquisition of these assets will allow Xspedius to combine its financial, technical and market resources and expertise with similar assets of ICG, thereby enhancing its ability to provide reliable, competitively priced services to customers. The Applicants emphasize that, following the proposed transfer, the former ICG customers will continue to receive services from an experienced and qualified carrier, which will be consistent with the quality of services currently provided by ICG. The Applicants anticipate that customers will experience a seamless transition of service provider, and note that the assignment of the ICG customer accounts will ensure that those customers continue to receive uninterrupted service.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before May 19, 2005 and reply comments on or before May 26, 2005.**⁶ Unless otherwise notified by the Commission, Applicants are permitted to transfer the stock and related control on the 31st day after the date of this notice.⁷ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Adam Kirschenbaum, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C211, Washington, D.C. 20554; e-mail: adam.kirschenbaum@fcc.gov
- (4) Renee Crittendon, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C311, Washington, D.C. 20554; e-mail: renee.crittendon@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room

CY-A257, Washington, D.C., 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Adam Kirschenbaum, at (202) 418-7280.

- FCC -